

**REMARKS**

**Acknowledgement of 10/6/2010 Examiner Interview**

The undersigned attorney would like to acknowledge, with appreciation, the time and courtesies extended to him in preparation for and conducting an examiner interview on 10/6/2010 with Examiners Smith and SPE Hindenburg. It is believed that significant progress was made toward identification of patentable subject matter and that prosecution of this application will, thereby, be materially advanced.

Claims 87-107 were pending in this application. Claims 91 and 94 are cancelled herein, the substance of their coverage being incorporated into claim 87 and new dependent claims 108 and 109 strictly for clarification and pursuant to the telephonic discussion of 10/6/2010 (See below). Claims 1-86 were previously cancelled, without prejudice. Applicant reserves the right to pursue the claim coverage of any cancelled claims in further prosecution.

All of the subject matter of the claims herein was searched in preparation of the Final Office Action. Thus, no new searches, or no further expenditure of Office resources should be needed. Therefore, entry of this Rule 116 Amendment and passage of all claims to issue is respectfully requested.

**Non-Art rejections**

It is noted with appreciation in the Final Office Action that no § 112 rejections from the 12/28/2009 Office Action have been reasserted. Despite the fact that the various § 112 rejections have been withdrawn, Applicant has amended claim 87 to incorporate most of the limitations of former dependent claims 91 and 94, the remaining limitations being put in claims 108 and 109. This was discussed during the aforementioned 10/6/2010 interview with Examiners Smith and Hindenburg. These amendments are intended to be clarifying and are not in any sense in response to any prior art rejection presently of record.

**Discussion of Jafari et al.-Withdrawal of § 102(e) Rejection Based Thereon**

The primary focus of prior art discussion during the aforementioned interview was that of Jafari et al. Patent Application Publication 2003/0013993. The undersigned argued, successfully, that the disclosure of Jafari et al. alleged to be most closely akin to the present invention *viz.*, FIG. 2, is not a completed guidewire structure at all. Further, the guidewire structure shown in FIG. 2 while potentially usable with some aspects of the present invention

is not a complete guidewire and could not, therefore, be used to perform any medical procedure without severe vascular injury. The Jafari et al. disclosure at FIG 2, in addition to being deficient, is an inoperable (even for Jafari's et al's. invention), incomplete or partial described guidewire structure. *Cf.*, Jafari et al. paragraph [0012].

At the conclusion of the discussion of Jafari et al. with Examiners Smith and Hindenburg and the undersigned on 10/6/2010, it was agreed that Jafari et al. would be withdrawn as a § 102 reference.

### **Clarifying Amendments to Claim 87**

Claim 87 has been amended to incorporate structure language which formally existed in dependent claims 91 and 94. Various minor amendments have also been made to several other claims pending in this application, most specifically to change antecedent references therein so as to make claim 87 the only independent article claim. No new matter has been introduced. The subject matter moved into claim 87 has been previously searched. Nothing other than previously-searched claim language has been inserted or removed in any of the presently pending claims. It is believed, therefore, that no further search or further Office resources need be expended in order to consider this and enter this Rule 116 Amendment.

The above amendments to claim 87 tend to emphasize, without limitations, the embodiment of the invention shown at FIG. 2. The re-canalization aspect of the present invention was discussed during the aforementioned interview. Specifically the discussion focused upon the need for a guidewire which can navigate to, and in some fashion "cross" vascular occlusions specifically including total vascular occlusions. Unless and until vascular occlusions can be "crossed" with, for example, a guidewire, percutaneous, transluminal, peripheral or coronary angioplasty procedures cannot be performed because a non-steerable catheter cannot thereafter be "guided" (as in guidewire thereto). In short, for example, balloon angioplasty cannot be applied to a vascular obstruction unless and until a balloon catheter can be directed to and through the site of vascular blockage by a guidewire to permit a balloon to be inflated therewithin.

Claim 87, as amended, focuses upon the structure and required function of "engaging and gradually opening the occlusion as the terminal member is urged therethrough." The clarifying language added to claim 87 focuses upon the structural details of the "distal leading edge portion" which is the part of the guidewire of this invention which first approaches a vascular occlusion. In dependent claim 93 this leading edge portion is described as "a chisel

edge". The occlusion-piercing aspect of the present invention is also clearly set forth in method claim 107. Dependent claims 108 and 109, which have language from cancelled claim 94, provide additional structural detail respecting the third and fourth surfaces of the terminal member.

**All Claims Should Now be Patentable.**

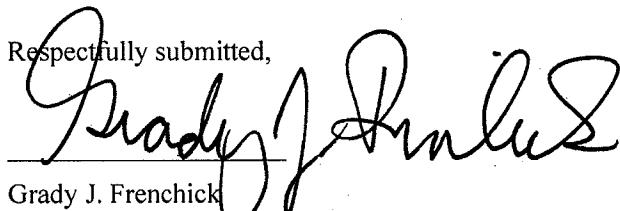
Jafari et al. was the primary reference upon which all claim rejections herein were based. Withdrawal of Jafari et al. as a reference, as being inoperative and uninformative with respect to the present invention, means that the § 102(e) rejection and all of the § 103(a) rejections with various secondary references are no long legally sound and should be withdrawn.

**Conclusion**

As noted, the above claim amendments are offered for clarification purposes and are not offered for any reason related to prior art of record. Applicant reserves the right to pursue claims of the scope of claim 87 prior to its amendment in future prosecution. Thus, under the auspices of 37 C.F.R. § 1.116 entry of this Amendment and passage of all pending claims, as amended, to issue is requested.

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Respectfully submitted,

  
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Grady J. Frenchick

Registration No.: 29,018

**ADDRESS:**

WHYTE HIRSCHBOECK DUDEK S.C.  
33 E. Main Street, Suite 300  
Madison, Wisconsin 53703  
(608) 255-4440  
Customer No. 56080